

### **REMARKS/ARGUMENTS**

Claims 1-20 are pending in the application. By this amendment, claims 1, 2, 4, 14, 18 and 20 are amended, new claim 21 has been added and claims 17 and 19 have been canceled without prejudice.

Applicants believe the amendments made herein add no new matter. Any amendments to the claims which have been made in this amendment, and which have not been specifically noted to overcome a rejection based on prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to be attached thereto. Reconsideration and reexamination of the application is respectfully requested in view of the following remarks.

#### **Related Applications**

The present application is a continuation in part of U.S. Patent Application No. 10/250,095, filed June 3, 2003, which is currently under non-final rejection.

#### **Interview Summary**

The Applicants kindly thank the Examiner for the telephonic interview with the Applicants' representatives on August 25, 2009. During the course of the interview, the claim rejections under 35 U.S.C. §101 and §103 were discussed. No agreement was reached regarding patentability.

#### **Rejections under 35 U.S.C. §101**

Claims 1-20 have been rejected under 35 U.S.C. 101 for being directed to non-statutory subject matter. The rejection is respectfully traversed.

Amended claim 1 is generally directed towards a method for improving ergonomics for an individual in a workplace comprising applying at least one indicium to at least one item having at least one physically adjustable parameter, adjusting the at least one parameter to an

ergonomically correct fit setting and storing, in a medium readable by a machine or a user, data representative of the ergonomically correct fit setting.

Amended claim 14 is generally directed towards a system for improving the ergonomics of an individual in a workplace having at least one item having at least one physically adjustable parameter comprising a survey of input data, a determination of at least one preferred setting for the physically adjustable parameter, providing at least one indicium on the item for indicating a setting of the physically adjustable parameter, adjusting the at least one physically adjustable parameter to the preferred setting and storing, in a medium readable by a machine or a user, data representative of the ergonomically correct fit setting.

Amended claim 18 is generally directed towards a method for improving the ergonomics for a student in a school, the school comprising at least one physically adjustable parameter, the method comprising requesting data associated with the student, determining at least one preferred setting for the at least one physically adjustable parameter, providing at least one indicium for the at least one item, communicating the at least one preferred setting to an individual at the school and storing, in a medium readable by a machine or a user, data representative of the ergonomically correct fit setting.

Claim 1 has been rejected under 35 U.S.C. 101 for reciting software steps. This interpretation is inaccurate and not supported by the specification. The method disclosed in amended claim 1 is directed towards adjusting physically adjustable parameters of a work item and applying indicia for visually indicating a range of fit settings. These steps are all directed towards physical, tangible items: a work item, such as a chair, for example, and indicia, such as colored symbols, for example, provided on the chair (See for example, Application, paragraph 244-246 and corresponding Fig. 49-61), and the ability to reposition the chair into a reproducible position (via the “physically adjustable parameter”). Because amended claim 1 is a process claim and is not merely reciting software, it is currently subject to the machine or transformation test as set forth in *In re Bilski*, according to the "Interim Examination Instructions for Evaluating

*Subject Matter Eligibility Under 35 U.S.C. 101*" issued August 2009 by the USPTO. According to the *Interim Instructions*, if the method transforms a particular item in a meaningful way, the method is an eligible statutory process. The method of amended claim 1 transforms a work item having physically adjustable parameters into a work item having indicia for indicating a range of fit settings for the physically adjustable parameters that can be adjusted to fit settings according to the indicia. This transformation is meaningful as it brings a work item from a state in which it is not ergonomically correct for an individual into a state that is ergonomically correct for an individual in a manner that can be recorded and stored for later reference, and used to reposition the work item back into the ergonomic position after it potentially has been mal-adjusted out of the preferred ergonomic position for a particular individual.

Therefore, because amended claim 1 is not directed towards software and because amended claim 1 passes the machine-or-transformation test as set forth in the *Interim Instructions*, amended claim 1 is directed to statutory subject matter and is therefore patentable. Claims 2-13 and 21, which depend from amended claim 1 are patentable for the same reasons as amended claim 1.

Amended claim 14 also passes the machine-or-transformation test as set forth in the *Interim Instructions*. Similar to amended claim 1, amended claim 14 transforms a work item having physically adjustable parameters into a work item having indicia for indicating a range of fit settings for the physically adjustable parameters that can be adjusted to fit settings according to the indicia. This transformation is meaningful as it brings a work item from a state in which it is not ergonomically correct for an individual into a state that is ergonomically correct for an individual in a manner that can be recorded and stored for later reference, and used to reposition the work item back into the ergonomic position after it potentially has been mal-adjusted out of the preferred ergonomic position for a particular individual.

Therefore, because amended claim 14 passes the machine-or-transformation test as set forth in the *Interim Instructions*, amended claim 14 is directed to statutory subject matter and is

therefore patentable. Claims 15-16, which depend from amended claim 14 are patentable for the same reasons as amended claim 14.

Amended claim 18 also passes the machine-or-transformation test as set forth in the *Interim Instructions*. Similar to amended claim 1, amended claim 18 transforms a work item having physically adjustable parameters into a work item having indicia for indicating a range of fit settings for the physically adjustable parameters that can be adjusted to fit settings according to the indicia. This transformation is meaningful as it brings a work item from a state in which it is not ergonomically correct for an individual into a state that is ergonomically correct for an individual in a manner that can be recorded and stored for later reference, and used to reposition the work item back into the ergonomic position after it potentially has been mal-adjusted out of the preferred ergonomic position for a particular individual.

Therefore, because amended claim 18 passes the machine-or-transformation test as set forth in the *Interim Instructions*, amended claim 18 is directed to statutory subject matter and is therefore patentable. Claim 20, which depends from amended claim 18 is patentable for the same reasons as amended claim 18.

### **Rejections under 35 U.S.C. §103**

Claims 1-6 and 14-17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,931,387 to Wong et al. in view of U.S. Publication No. 20020095417 to Gordon. The rejection is respectfully traversed.

Wong et al. '387 discloses a method of inputting and analyzing data relating to ergonomics in the workplace that uses an artificial intelligence search engine to search through a database to find recommendations based on user input.

Gordon '417 discloses software for collecting and analyzing workplace data to created ergonomics report that are primarily web based.

Neither Wong '387 nor Gordon '417 discloses applying or providing at least one indicium to the at least one item substantially along the range of motion of the at least one physically adjustable parameter for visually indicating a range of fit settings for the at least one physically adjustable parameter and adjusting the physically adjustable parameter to an ergonomically correct fit setting as generally set forth in amended claims 1 and 14. Nor do they disclose storing, in a medium readable by at least one of a machine and a user, data representative of the at least one ergonomically correct fit setting indicated by the at least one indicium associated with the particular individual.

The Examiner admits in the Office Action mailed April 29, 2009 that Wong et al. '387 does not disclose applying at least on indicium to at least one item for visually indicating a fit setting. The Examiner cites paragraphs [0043] and [0045] of Gordon '417 as disclosing indicia, however these paragraphs merely incidentally disclose adjustment of office furniture based on the output of an ergonomics report. There is no disclosure of applying or providing indicium to an item along the range of motion of the at least on physically adjustable parameter for visually indicating a range of fit settings for the at least one physically adjustable parameter and adjusting the physically adjustable parameter to an ergonomically correct fit setting. Nor does Gordon '417 disclose storing, in a medium readable by at least one of a machine and a user, data representative of the at least one ergonomically correct fit setting indicated by the at least one indicium associated with the particular individual. Neither Wong '387 nor Gordon '417 disclose any teaching, suggestion or motivation to provide indicia for visually indicating fit settings and storing data representative of the settings as set forth in amended claims 1 and 14.

Therefore, because neither Wong '387 nor Gordon '417 disclose any teaching, suggestion or motivation to provide indicia for visually indicating fit settings and storing data representative of the settings as set forth in amended claims 1 and 14, amended claims 1 and 14 are therefore patentable in view of Wong '387 either alone or in combination with Gordon '417. Claims 2-13 and 21, which depend from amended claim 1, are patentable for the same reasons as amended

claim 1. Claims 15-16, which depend from amended claim 14, are patentable for the same reasons as amended claim 14.

Claims 7-13 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,931,387 to Wong et al. in view of U.S. Publication No. 20020095417 to Gordon and further in view of U.S. Patent No. 5,918,693 to Mantovani et al. The rejection is respectfully traversed.

Claims 7-13 depend from amended claim 1 and are therefore patentable in view of Wong '387 either alone or in combination with Gordon '417 for the same reasons as amended claim 1 above. Mantovani '693 does nothing more than merely disclose a work truck having a steering wheel that is adjustable. Mantovani '693 does not overcome any of the deficiencies of Wong '387 either alone or in combination with Gordon '417 with regards to amended claim 1 as discussed above. Neither Wong '387, Gordon '417 nor Mantovani '693, either alone or in combination disclose any teaching, suggestion or motivation to provide indicia for visually indicating fit settings and storing data representative of the settings as set forth in amended claim 1. Therefore, amended claim 1 is patentable in view of Wong '387, Gordon '417 and Mantovani '693, either alone or in combination.

Claims 7-13, which depend from amended claim 1 are therefore patentable in view of Wong '387, Gordon '417 and Mantovani '693, either alone or in combination, for the same reasons as amended claim 1.

Claims 18-20 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,931,387 to Wong et al. in view of U.S. Patent No. 6,039,392 to Dencker. The rejection is respectfully traversed.

Dencker '392 discloses a desk, preferably for a school, with adjustable components. As discussed above, Wong '387 et al. discloses a method of inputting and analyzing data relating to ergonomics in the workplace that uses an artificial intelligence search engine to search through a

data base to find recommendations based on user input. Neither Wong '387 nor Dencker '392 disclose providing at least one indicium for at least one item to visually indicate a setting for the at least one physically adjustable parameter of the item along the range of motion of the physically adjustable parameter or storing, in a medium readable by at least one of a machine and a user, data representative of the at least one ergonomically correct fit setting indicated by the at least one indicium associated with a particular individual, as set forth in amended claim 18.

Therefore, because neither Wong '387 nor Dencker '392 disclose any teaching, suggestion or motivation to provide at least one indicium for visually indicating a setting and storing data representative of the setting, amended claim 18 is patentable in view of Wong '387, either alone or in combination with Dencker '392. Claim 20, which depends from amended claim 18, is patentable for the same reason as amended claim 18.

### **Conclusion**

Early notification of allowability is respectfully requested. If there are any remaining issues which the Examiner believes may be resolved in an interview, the Examiner is respectfully invited to contact the undersigned attorney.

Respectfully submitted,

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